

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**ADMINISTRATIVE CONSENT ORDER**

<b>IN THE MATTER OF:</b>  <b>PHEASANT RIDGE FARMS, INC.</b>  <b>POITAWATTAMIE COUNTY, IOWA</b>	<b>ADMINISTRATIVE CONSENT ORDER</b> <b>NO. 2008-AFO- 09</b>
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**TO:** Pheasant Ridge Farms, Inc.  
c/o Dan Pedersen, Reg. Agent  
25889 Idlewood Rd.  
Council Bluffs, IA. 51503

**I. SUMMARY**

This Administrative Consent Order (Order) is entered into between Pheasant Ridge Farms, Inc. (Pheasant Ridge) and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of Iowa's requirements pertaining to animal feeding operations and manure control. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions or response regarding this Order should be directed to:

**Relating to technical requirements:**

Dan Olson  
IDNR Field Office #4  
1401 Sunnyside Lane  
Atlantic, IA 50022  
Ph: (712) 243-1934  
Fax: (712) 243-6251

**Relating to legal requirements:**

Randy Clark, Attorney II  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: (515) 281-8891

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Attn: Randy Clark

# **IOWA DEPARTMENT OF NATURAL RESOURCES**

## **ADMINISTRATIVE CONSENT ORDER**

**ISSUED TO: PHEASANT RIDGE FARMS, INC.**

### **II. JURISDICTION**

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any Order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part I and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

### **III. STATEMENT OF FACTS**

1. Pheasant Ridge Farms, Inc. (Pheasant Ridge) owns and operates a cattle open feedlot operation at 25889 Idlewood Road, Underwood, located in the SE1/4 of Section 32, T76N, R42W (Norwalk Township), Pottawattamie County, Iowa. The operation consists of a 4,000 head capacity open feedlot; two earthen solids settling structures were utilized for manure runoff control at the time of the complaint; construction of two settled open feedlot effluent basins and a third solids settling structure are now complete. One settled open feedlot effluent basin and a solids settling structure were completed in June, 2006. The other structures were completed by August, 2006.

2. On May 4, 2001, the Department received a completed Iowa Plan registration form from Pheasant Ridge indicating 1500 head of beef cattle in a column with this heading: "Maximum Number of Animals In the Open Feedlot At Any One Time."

3. On May 29, 2003, Department Field Office #4 (FO4) staff investigated a complaint that manure from the Pheasant Ridge operation frequently flows under an adjacent road via a culvert and then into an unnamed Mosquito creek tributary. FO4 staff concluded that additional manure control measures would be needed on the south side of the feedlot, but did not observe any violations of manure control requirements at the time of the investigation.

4. On July 1, 2004, FO4 staff and supporting staff from FO3 inspected the Pheasant Ridge operation. Dan Pedersen stated that the operation had a capacity of 2,700 head of beef cattle. Solids settling terraces were observed on the north, south and west sides of the feedlot. By letter dated July 7, 2004, the Department summarized the inspection and required Pheasant Ridge to comply with various deadlines designed to bring the operation into compliance with NPDES permit requirements as contemplated by the Iowa Plan. Pheasant Ridge was also directed to properly maintain and operate all existing manure control structures, including more frequent removal of manure solids to prevent discharge violations.

5. Pheasant Ridge submitted a plan of action to the Department on February 3, 2005, indicating that final plans would be submitted by May, 2005 and that construction would be completed by March, 2006. The Department approved this plan of action.

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE CONSENT ORDER

### ISSUED TO: PHEASANT RIDGE FARMS, INC.

6. By letter dated September 14, 2005, Pheasant Ridge's engineer submitted applications for an NPDES permit and a construction permit. The letter included the statement that "The feedlot currently has 4000 head of cattle." This statement was consistent with the number of head reported in the enclosed applications.

7. On May 9, 2006, FO4 staff conducted a scheduled on-site inspection of the Pheasant Ridge operation as well as an investigation of a complaint of manure runoff from the operation. Two solid settling structures had recently been constructed to intercept runoff from the east, west and north sides of the feedlot. Open feedlot effluent from these structures discharged to a bench terrace on the west side of the feedlot where it pooled along with a significant amount of manure solids. Effluent overflow from this pooled area discharged to a flat, channelized vegetated area that provided minimal filtration of solids. After crossing the vegetated area, effluent flowed southerly through a culvert under an east-west county road (Idlewood) bordering the south side of the operation and into an eroded discharge channel. Laboratory analysis of a sample collected from effluent in the culvert revealed an ammonia nitrogen concentration of 330 Milligrams per liter (mg/L), a fecal coliform concentration of 75000 per 100 milliliters (/100 mL) and a 5-day Total Biochemical Oxygen Demand (BOD) concentration of 8200 mg/L. Approximately 280 feet south of Idlewood, runoff from the south side of the feedlot entered the discharge channel and the channel continued south, southwesterly across a field of corn stubble. The discharge channel was well-defined and the degree of erosion indicated that the discharge had occurred for many days; the liquid in the channel was brown and murky. Approximately 1000 feet south of Idlewood the channel became significantly more pronounced where groundwater was observed seeping into the channel. Approximately 1,300 feet south of Idlewood the discharge channel flowed into an unnamed Little Mosquito Creek tributary from the east. The tributary was observed to be clear upstream of the point of confluence and highly turbid (tan) on the downstream side. Despite the diluting effect of groundwater seeping into the channel that carried the discharge, the discharge was observed to be highly turbid (dark brown) with small amounts of foam forming at or following constricting points in the flow path immediately prior to the point of confluence. Laboratory analyses of samples collected from the discharge channel, and the unnamed tributary immediately upstream of this confluence and downstream of this confluence yielded the following results:

	<b>Ammonia Nitrogen (mg/L)</b>	<b>Fecal Coliform (n/100 mL)</b>	<b>BOD (mg/L)</b>
<b>Discharge channel</b>	89	20000	850
<b>Unnamed tributary</b>	1.6	30	15
<b>Downstream of confluence</b>	39	19000	320

# **IOWA DEPARTMENT OF NATURAL RESOURCES**

## **ADMINISTRATIVE CONSENT ORDER**

### **ISSUED TO: PHEASANT RIDGE FARMS, INC.**

Dan Pederson stated that the feedlot had received 6.1 inches of rainfall during April, 2006, and that 3.2 inches of that amount occurred during the last two days of the month. Mr. Pedersen also indicated that the two proposed settled open feedlot effluent basins had not been constructed yet, noting that he had not received a construction permit for those structures from the Department.

8. On June 21, 2006, the Department issued Construction Permit No. CP-A2005-078 authorizing construction of two settled open feedlot effluent basins to serve a total of 4,000 beef cattle.

9. On September 8, 2006, NPDES Permit No. 2-78-00-0-25 was issued to Pheasant Ridge.

### **IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. Inasmuch as no such permit had been issued for this facility at the time of the above-summarized discharge, the foregoing facts establish that this provision has been violated.

2. 2005 Iowa Code Supplement section 459A.104 requires the Environmental Protection Commission to adopt rules related to the construction or operation of open feedlot operations. The Commission has done so at 567 IAC Chapter 65.

3. 2005 Iowa Code Supplement subsection 459A.401(3) and 567 IAC 65.101(3) prohibit an open feedlot operation with an animal unit capacity<sup>1</sup> of 1,000 animal units or more from discharging open feedlot effluent<sup>2</sup> into any waters of the United States unless the discharge is pursuant to an NPDES permit. The foregoing facts establish that these provisions were violated.

4. 567 IAC 65.101(9) requires any person storing, handling, transporting, or land applying manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable solids from an open feedlot operation who becomes aware of a release to notify the Department of the release as soon as possible, but not later than six hours after the onset or discovery of the release. The foregoing facts indicate that this provision has been violated.

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<sup>1</sup> Defined in 2005 Iowa Code Supplement subsection 459A.102(5) as "a measurement used to determine the maximum number of animal units that may be maintained as part of an open feedlot operation."

<sup>2</sup> Pursuant to 567 IAC 65.101(3) this discharge prohibition also applies to manure, process wastewater, settled open feedlot effluent and settleable solids as those terms are defined in 567 IAC 65.100.

# **IOWA DEPARTMENT OF NATURAL RESOURCES**

## **ADMINISTRATIVE CONSENT ORDER**

### **ISSUED TO: PHEASANT RIDGE FARMS, INC.**

5. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor, or other aesthetically objectionable conditions; discharges that settle to form sludge deposits; discharges that interfere with livestock watering; or discharges that are toxic to animal or plant life. The foregoing facts establish that one or more of these criteria have been violated.

### **V. ORDER**

THEREFORE, the Department hereby orders and Pheasant Ridge consents to pay an administrative penalty of \$9,000.00. The penalty shall be paid to the Department within 30 days of the date the Director signs this Order.

### **VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for each violation of water pollution control laws; more severe criminal sanctions are also provided.

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$9,000.00 is assessed. The penalty shall be paid within 30 days of the date the Director signs this Order. The administrative penalty is determined as follows:

a. Economic Benefit. Time and money were saved by Pheasant Ridge in avoiding required manure control. However, this savings was offset by the cost of manure controls subsequently installed. Therefore, no amount is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time as the most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by water quality analysis, and by visual and olfactory observation of impact to the unnamed tributary. Multiple rule and statutory provisions were violated: failure to notify of a release; discharge to waters of the state/United States; and violation of water quality standards. For these reasons, \$3,000.00 per day could be assessed for this factor for each of the three above-cited violations. However, in view of the maximum administrative penalty and the Culpability factor, below, \$5,000.00 is assessed for this factor.

c. Culpability. Due to the Department's July 1, 2004 inspection and the July 7, 2004 follow-up letter, Pheasant Ridge should have been fully aware of manure control requirements. Nevertheless, Pheasant Ridge failed to prevent the above-summarized discharge. For these reasons, \$3,000.00 per day could be assessed for this factor for each of the three above-cited

**IOWA DEPARTMENT OF NATURAL RESOURCES**

**ADMINISTRATIVE CONSENT ORDER**

**ISSUED TO: PHEASANT RIDGE FARMS, INC.**

violations. However, in view of the maximum administrative penalty and the Gravity factor, above, \$5,000.00 is assessed for this factor.

d. Aggravating/Mitigating Factors. The Department acknowledges that Pheasant Ridge applied for a construction permit almost seven months prior to the May 9, 2006 discharge event. This warrants the maximum mitigation amount for this factor. Therefore, the above-calculated penalty is reduced by \$1,000.

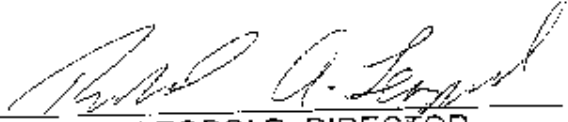
**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code sections 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This Order is entered into knowingly by and with the consent of Pheasant Ridge. By signature to this Order, all rights to appeal this Order are waived by Pheasant Ridge.


**VIII. NONCOMPLIANCE**

Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191 and 2005 Iowa Code Supplement section 459A.501. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the facts described in Division III of this Order and all violations related to those facts, including but not limited to all violations described in

Division IV of this Order.

  
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RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES  
2008.

Dated this 3 day of  
March, 2008.

  
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PHEASANT RIDGE FARMS, INC.

Dated this 22 day of  
July, 2008.

Field Office 4; EPA; Randy Clark; Gene Tinker; VIII. D.1.b, D.2.d, D.3.a